

IN THE CASE OF: ██████████

BOARD DATE: 14 February 2024

DOCKET NUMBER: AR20230007887

APPLICANT REQUESTS: an upgrade of his under other than honorable conditions (UOTHC) characterization of service to honorable.

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:

- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)
- Statement of support, dated 15 March 2023

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code (USC), Section 1552(b); however, the Army Board for Correction of Military Records (ABCMR) conducted a substantive review of this case and determined it is in the interest of justice to excuse the applicant's failure to timely file.

2. The applicant states, in effect:

a. When he joined the Army, he was young and had never been away from home. He takes full responsibility for his actions. He was a good Soldier with a lot of problems. For some reason, his captain hid his grandmother's death from him. His grandmother was like a mother to him. When his sister told him of her passing, he ran off, not realizing the consequences. When he turned himself in, he was offered a Chapter 10 or a field grade Article 15. Had he known how it would affect his future, he would have taken the Article 15.

b. He is proud of his time in the service. He is a good person who likes helping people. He volunteered at a food bank and clothing bank. He was a translator for Russian, Hispanic, and French Creole speaking people, and he has certificate in "Guiding Good Choices" for teens.

3. The applicant enlisted in the Regular Army on 22 October 1979 for a 3-year period. Upon the completion of his initial entry training, he was awarded military occupational specialty 11B (Infantryman). The highest rank he attained was private first class/E-3.

4. The applicant accepted nonjudicial punishment under the provisions of Article 15 of the Uniform Code of Military Justice on three occasions:

a. On 10 March 1981, for failure to go at the time prescribed to his appointed place of duty, on or about 25 February 1981. His punishment consisted of reduction to private/E-2, forfeiture of \$100.00 pay, 14 days of extra duty, and 14 days of restriction.

b. On 28 May 1981, for failure to obey a lawful order issued by a noncommissioned officer and for being drunk and disorderly on the shuttle bus, on or about 6 May 1981. His punishment consisted of reduction to private/E-1, 14 days of extra duty, and 14 days of restriction.

c. On 23 June 1981, for violating a lawful general regulation by having a knife with a blade approximately six inches long in his possession, on or about 30 May 1981. His punishment consisted of forfeiture of \$130.00 pay, 14 days of extra duty, and seven days of restriction.

5. Special Court-Martial Order Number 56, issued by Headquarters, 8th Infantry Division, dated 15 August 1981, shows the applicant was found guilty of pushing a commissioned officer, on or about 9 March 1981, striking and threatening to kill a service member, on or about 14 March 1981, and drunk and disorderly conduct and damage to government property, on or about 30 March 1981. He was sentenced to forfeiture of \$334.00 pay per month for four months and confinement at hard labor for four months. The sentence was adjudged on 2 July 1981. The sentence and findings of guilty were approved on 15 August 1981.

6. Special Court-Martial Order Number 618, issued by U.S. Army Retraining Brigade, Fort Riley, KS, dated 29 September 1981, shows the unexecuted portion of the approved sentence to confinement at hard labor for four months and the forfeiture of \$334.00 pay per month for four months was suspended until 8 December 1981, at which time, unless sooner vacated, the suspended portion of the sentence would be remitted without further action.

7. The applicant accepted nonjudicial punishment under the provisions of Article 15 of the Uniform Code of Military Justice on 28 December 1981, for failure to go at the time prescribed to his appointed place of duty, on or about 14 December 1981. His punishment consisted of forfeiture of \$128.00 pay, 14 days of extra duty, and 14 days of restriction.

8. Ten DA Forms 4187 (Personnel Action) show the following changes in the applicant's duty status:

- Present for Duty (PDY) to Absent Without Leave (AWOL) on 4 January 1982

- AWOL to Dropped from Rolls (DFR) on 4 February 1982
- DFR to PDY, surrendered to Military Police, on 10 February 1982
- PDY to AWOL on 16 February 1982
- AWOL to PDY, surrendered to unit, on 23 February 1982
- PDY to AWOL on 14 March 1982
- AWOL to PDY, surrendered to unit, on 16 March 1982
- PDY to AWOL on 19 March 1982
- AWOL to PDY, surrendered to unit, on 22 March 1982
- PDY to confined by military authorities on 23 March 1982

9. The applicant's service record is void of the complete facts and circumstances surrounding his discharge processing. However, the applicant was discharged on 15 April 1982, under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10, by reason of administrative discharge – conduct triable by court-martial. His DD Form 214 (Certificate of Release or Discharge from Active Duty) confirms his character of service was UOTHC, with separation code JFS and reenlistment code RE-3, 3B, 3C. He was credited with 2 years, 2 months, and 17 days of net active service. He was awarded or authorized the Army Good Conduct Medal, Army Service Ribbon, and two marksmanship badges.

10. The applicant provides a statement of support, dated 15 March 2023, wherein the author states he has known [the applicant] long enough to know he is a man of honor, trustworthy, helpful, and kind to others. The author feels fortunate to have him for a friend.

11. Administrative separations under the provisions of Army Regulation 635-200, Chapter 10 are voluntary requests for discharge for the good of the service, in lieu of a trial by court-martial. An UOTHC character of service is normally considered appropriate.

12. The Board should consider the applicant's argument and/or evidence in accordance with the published equity, injustice, or clemency determination guidance.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The Board carefully considered the applicant's record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation, and published Department of Defense guidance for liberal and clemency determinations requests for upgrade of his characterization of service. Upon review of the applicant's petition, available military records and the medical review, the Board

determined there is insufficient evidence of in-service mitigating factors to overcome the pater of misconduct. The Board noted the applicant’s service record exhibits numerous instances of misconduct during his enlistment period for 2 years, 2 months, and 17 days of net active service.

2. The Board considered the applicant’s post service accomplishment and character letter of support attesting to his honorable conduct and noteworthiness. However, the Board agreed the applicant’s numerous periods of AWOL could not be mitigated. Based on the preponderance of evidence, the Board determined that the character of service the applicant received upon separation was not in error or unjust. Therefore, relief was denied.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
■	■	■	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The evidence presented does not demonstrate the existence of a probable error or injustice. Therefore, the Board determined the overall merits of this case are insufficient as a basis for correction of the records of the individual concerned.

3/29/2024

X [Redacted Signature]

CHAIRPERSON

[Redacted Name]

I certify that herein is recorded the true and complete record of the proceedings of the Army Board for Correction of Military Records in this case.

REFERENCES:

1. Title 10, USC, Section 1552(b), provides that applications for correction of military records must be filed within 3 years after discovery of the alleged error or injustice. This provision of law also allows the ABCMR to excuse an applicant's failure to timely file within the 3-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.

2. Army Regulation 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The regulation states, the ABCMR begins its consideration of each case with the presumption of administrative regularity. The ABCMR is not an investigative body and decides cases based on the evidence presented in the military records provided and the independent evidence submitted with the application.

3. Army Regulation 635-200, in effect at the time, set forth the basic authority for the separation of enlisted personnel.

a. Chapter 10 of that regulation provides, in pertinent part, that a member who has committed an offense or offenses for which the authorized punishment includes a punitive discharge may, submit a request for discharge for the good of the service in lieu of trial by court-martial. The request may be submitted at any time after charges have been preferred and must include the individual's admission of guilt. Although an honorable or general discharge is authorized, a discharge under other than honorable conditions is normally considered appropriate.

b. An honorable discharge is a separation with honor and entitles the recipient to benefits provided by law. The honorable characterization is appropriate when the quality of the member's service generally has met the standards of acceptable conduct and performance of duty for Army personnel or is otherwise so meritorious that any other characterization would be clearly inappropriate.

c. A general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

4. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records (BCM/NR) regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. BCM/NRs may grant clemency regardless of the type of court-martial. However, the guidance applies to more than clemency from a sentencing in a court-

marital; it also applies to other corrections, including changes in a discharge, which may be warranted based on equity or relief from injustice.

//NOTHING FOLLOWS//